

AntitrustConnect Blog

Threat of U.S. Antitrust Challenge Leads Nasdaq to Abandon Pursuit of NYSE

Jeffrey May (Wolters Kluwer) · Monday, May 16th, 2011

Nasdaq OMX Group, Inc. and IntercontinentalExchange (ICE) have withdrawn their proposal to acquire NYSE Euronext in the face of antitrust objections from the U.S. Department of Justice.

The Justice Department issued a [statement](#) on May 16, saying that it had informed the companies that it would file an antitrust lawsuit to block the deal. Under the proposal, which had been rejected by NYSE, Nasdaq would have gained control over NYSE's stock listings business, stock trading venues, and market data licensing operations, and NYSE's futures businesses, located primarily in Europe, would have been sold to ICE.

On April 1, Nasdaq and ICE submitted an unsolicited bid to acquire NYSE. The proposal came shortly after Deutsche Boerse AG and NYSE Euronext announced their intention to combine in February to "create the world's premier global exchange group."

Nasdaq had expressed confidence that its proposal was likely to receive the required regulatory approvals. It appeared that Nasdaq was prepared to make concessions to obtain antitrust approval. Nasdaq had offered a \$350 million reverse break-up fee, which NYSE Euronext was to receive in the event of a failure to obtain required antitrust or competition approvals.

"Substantial Remedies" Offered

"We took the decision to withdraw our offer when it became clear that we would not be successful in securing regulatory approval for our proposal despite offering a variety of substantial remedies, including the sale of the NYSE SRO and related businesses," said Nasdaq CEO Bob Greifeld in a May 16 statement.

Justice Department Statement

In its expedited review of the Nasdaq proposal, the Justice Department determined that "the acquisition would have substantially eliminated competition for corporate stock listing services, opening and closing stock auction services, off-exchange stock trade reporting services and real-time proprietary equity data products." The companies were described as "the only competitors in several businesses vital to the success of U.S. equity markets."

"The companies' decision to abandon their bid for NYSE Euronext eliminates the competitive concerns developed during our investigation," said Christine Varney, Assistant Attorney General

in charge of the Department of Justice Antitrust Division. “The acquisition would have removed incentives for competitive pricing, high quality of service, and innovation in the listing, trading and data services these exchange operators provide to the investing public and to new and established companies that need access to U.S. stock markets.”

Now that Nasdaq has withdrawn its offer, the focus of competition and regulatory authorities in the United States and Europe will be on the Deutsche Boerse/NYSE Euronext agreement. The transaction, which is not expected to close until late 2011, will almost certainly raise antitrust concerns.

The text of the May 16, 2011, Justice Department statement will appear at **CCH Trade Regulation Reporter ¶50,269**.

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